

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0003
Motor Carrier Tax
Penalty
For the Years 1999, 2000, 2001

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ISSUES

I. Motor Carrier Fuel Tax—Adequate Documentation

Authority: IC § 6-6-4.1-1; IC § 6-6-4.1-4; IC § 6-6-4.1-10; IC § 6-6-4.1-20; IC § 6-8.1-5-4; 45 IAC 13-2-1; 45 IAC 13-4-1; 45 IAC 13-4-3.

Taxpayer protests the proposed assessment of Indiana's motor carrier fuel tax.

II. Penalty—Negligence

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the proposed assessment of the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer is a common carrier that transports general freight, mostly pharmaceuticals, in trucks with refrigerator units. During the audit period (January of 1999 through December of 2001), taxpayer had approximately 39 vehicles subject to Indiana's Motor Carrier Fuel Tax. Some of the trucks are company owned, and some are operator owned. Drivers complete mileage and fuel information from stations and also withdraw fuel from taxpayer's bulk storage tank. Owner operators purchase all fuel from stations. During the audit period, an outside contractor compiled fuel and mileage information for the IFTA reports from trip envelopes that taxpayer submitted.

DISCUSSION

I. Motor Carrier Fuel Tax—Adequate Documentation

Taxpayer protests the proposed assessment of Indiana's Motor Carrier Fuel Tax, IC § 6-6-4.1-1 *et seq.* (MCT). The audit determined that taxpayer had not properly recorded all fuel withdrawals from the bulk fuel tank. Therefore, there was "unaccounted for fuel" found by comparing beginning and ending amounts in the bulk fuel tank. This fuel had not been properly taxed pursuant to IC § 6-6-4.1-4. *See also*, 45 IAC 13-2-1, 45 IAC 13-4-1, and 45 IAC 13-4-3, the applicable regulations. IC § 6-6-4.1-20 imposes a penalty for failure to keep records required by IC § 6-8.1-5-4.

In the Letter of Protest submitted to the Department, taxpayer originally argued that truck owner operators could have stolen the "unaccounted for fuel." At the hearing, taxpayer explained that he thought the outside contractor was reconciling the appropriate reports on the bulk fuel tank in order to account for all fuel dispensed. Taxpayer only became aware that the outside contractor was ignorant of the fact that taxpayer had a bulk fuel tank when the audit was performed. The outside contractor had not been compiling and reconciling the proper records in order to determine taxpayer's liability under the MCT. Taxpayer fired the outside contractor immediately and hired someone to do all metering, key locking, and recordkeeping in house. This person completely revamped and modernized taxpayer's recordkeeping system and fuel security systems, and spends several hours everyday keeping records up-to-date.

Pursuant to IC § 6-6-4.1-10, taxpayer is required at all times to keep accurate records of fuel disbursed and taxes remitted on the disbursed fuel. Taxpayer admittedly did not ensure that proper records were kept; instead, he relied on the expertise of the outside contractor whose services he engaged to do the job for him. Taxpayer asserts it is currently in compliance with the record keeping provisions of MCT. He was not in compliance during the audit period. Therefore, the audit's proposed assessment of the tax is proper.

FINDING

Taxpayer's protest concerning the proposed assessment of Indiana's Motor Carrier Fuel Tax is denied.

II. Penalty—Negligence

Taxpayer protests the imposition of the 10% negligence penalty. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer stated at the hearing that there was no intent to defraud the state, and that his failure to pay the proper amount of tax was due to his reliance on the expertise of the independent contractor he specifically hired to maintain proper records.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed. . . ." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Taxpayer failed to keep proper fuel records related to the bulk fuel tank withdrawals, which caused inadequate records for several mileage categories; the contractor's negligence caused the bulk fuel recordkeeping error. And while a taxpayer cannot avoid tax liability based on a contract, given the totality of the circumstances, waiver of the penalty is appropriate in this instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is sustained.